?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 29.10.2018

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THE HONOURABLE MR.JUSTICE M.M.SUNDRESH
AND
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

+H.C.P(MD)No.1139 of 2018

#Esakku .. Petitioner

Vs.

$1.State of Tamil Nadu, rep.by
The Principal Secretary to Government,
Home, Prohibition and Excise Department,
Fort.St.George,
Chennai ~ 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District,
Tirunelveli.

3.The Superintendent of Prison,
Central Prison,
Palayamkottai,
Tirunelveli. .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Habeas Corpus, calling for the entire records connected with the detention order passed in M.H.S.Confdl No.67/2018 dated 16.07.2018 on the file of the 2nd respondent herein and quash the same and direct the respondents to produce the detenu or body of the detenu namely Esakku, aged about 38 years S/o.Pakiyam, now detained at Central Prison, Palayamkottai before this Court and set him at liberty forthwith.
!For Petitioner : Mr.N.Pragalathan
^For Respondents : Mr.K.Dinesh Babu
Additional Public Prosecutor.

:ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner is the detenu. He has been detained by the second respondent by his order in M.H.S.Confdl No.67/2018 dated 16.07.2018, holding him to be a Goonda, as contemplated under Section 2(f) of the Tamil Nadu Act 14 of 1982. The said order is under challenge in this Habeas Corpus Petition.

2.We have heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondents. We have also perused the records produced by the Detaining Authority.

3.The learned counsel for the petitioner would submit that there is total non~application of mind on the part of the Detaining Authority in passing the detention order, as, according to him, the detenu has not filed any bail application in the ground case. However, the detention order has been passed by placing reliance upon the bail orders granted in similar cases and stated that there is likelihood of the detenu coming out on bail. Thus, there is non~application of mind on the part of the Detaining Authority.

4.As rightly contended by the learned counsel appearing for the petitioner, the Detaining Authority referred to the fact that no bail application was filed or pending in the ground case. However, the Detaining Authority proceeded further to express subjective satisfaction that there was real possibility of the detenu coming out on bail, which shows total non~ application of mind. Thus, on this sole ground alone, the impugned detention order is liable to be set aside.

5.In the result, the Habeas Corpus Petition shall stand allowed and the Detention Order passed by the second respondent, in his proceedings in M.H.S.Confdl No.67/2018 dated 16.07.2018, is quashed. The detenu, namely, Esakku, aged about 38 years S/o.Pakiyam, is ordered to be set at liberty forthwith, if his detention is not required in connection with any other case.

To

1.The Principal Secretary to Government,
State of Tamil Nadu,
Home, Prohibition and Excise Department,
Fort.St.George, Chennai ~ 600 009.

2.The District Collector and District Magistrate,
Tirunelveli District, Tirunelveli.

3.The Superintendent of Prison,
Central Prison, Palayamkottai,
Tirunelveli.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.